

THE LAST POLITICAL REFORM IN ARGENTINA IN 2009: DISCLOSING IMPLICATIONS BEYOND THE FORMAL LAW *

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Abstract: In 2009 the Argentinian Congress passed the Law 26.571 of “Democratization of Political Representation, Transparency and Electoral Equity”. Considering the importance of these kinds of reforms for the political system, this paper aims to describe and analyze this political reform from a new approach in the study of institutional changes: a two-level theory. Taking into account distributive and efficiency principles, as well as historical precedents, a more comprehensive model is proposed. It lets us reflect on the diverse elements of the new legislation, its objectives and pretended effects, some of which could not or will difficultly be reached. In addition to this, it is argued that this last political reform in the country is part of a new trend in Latina American democracies. Its design and its purposes reveal that this institutional amendment is more than just that. As in “consolidated democracies” changes are no longer radical; on the contrary, incremental amendments to ordinary legislation are becoming the rule. To conclude, some reflections about the effects of the political reform on Argentinean democracy and political institutions are proposed. A comparative research agenda of last electoral amendments in other countries of the sub-continent is suggested.

Keywords: Argentina. Political Reform. Institutional Change. Two-level Theory. New Trend.

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“Electoral reform is founded upon the principle that altering the formal rules matters based on the assumption that certain desirable consequences for social and political engineering can be achieved through the public policy process”.

(Norris, P. 2004, p. 5)

1 Introduction

In his seminal contribution to the theory of democracy, Schumpeter (1943) made a famous distinction, which he borrowed from Max Weber: we can understand democracy as a supreme value in itself or as a method for the selection of leaders. The latter sees it as a way for the citizenry to select its leaders.

According to North (1993), “institutions (*in general*) are the rules of the game in a society or, more formally, are the constraints devised by men to shape human interaction”. Electoral systems are the only institutional mechanisms capable of aggregating individual preferences into collective results, which is in the core of a representative democracy.

The academic and political fascination generated by electoral reforms can be explained by the fact that the amendment of electoral institutions would certainly have an effect on the process of democratic consolidation. However, what makes it even more fascinating is that institutional amendments always “inherit” the disequilibria that characterize the preference for outcomes.

Electoral or political reforms are endogenous institutional amendments defined and settled by and within the institutional framework in force in a certain moment. When considering issues of an electoral reform, there is considerable evidence that existing institutions matter as the starting point for any modifications, begun in an incremental process (Norris: 2004). Consequently, reforms are set up in order to modify the future performance of the institutional framework, involving efficiency and consensual issues.

Considering the aforementioned, this article aims to describe and analyze the electoral reform that took place in Argentina in 2009. The political relevance of this legislation refers specially to its formally stated pretensions: to restructure the party system and democratize it.

We present two principal arguments. The first one states that this reform sets Argentina in a trend of institutional amendments which

have usually characterized consolidated¹ democracies. Institutional changes in consolidated political systems are usually incremental, as North argues. Our assumption is in tension with a part of the current literature, which still does not recognize democratic stability in the region. The second guess is that most of the working papers on political reforms tend to analyze them from a strategic perspective (in new institutionalism words), without considering any other important aspects. We think such analysis cannot explain the whole change. Hence, to avoid bias we propose an approach to the reform from a two-level theory² comprising distributive and efficiency principles, as well as a historical tracking. Such inquiry implies a broader and more comprehensive model and will let us state that many of the objectives discursively intended by this reform cannot be reached.

This paper proceeds as follows. In section one, we introduce the reform and its main axes. Secondly, the two-level theory is proposed, and the reform is disaggregated in its principal points matching the theoretical framework. Finally, we evaluate what really happened when it was implemented for the first time and suggest some concluding reflections.

2 Law 26.571: Its Principal Axes.

There is general consent that electoral reforms are political processes. These processes are a product of a democracy of parties, and therefore, inevitably come up as a result of the majority configuration of political interests in the party system. Also, they are natural products of historical development of the political system. Hence, we cannot think of having an electoral reform that is the result of something else than the internal conditions of the current institutional structure. The environment that every electoral system creates has multiple implications for the electoral results that it produces. Parties evaluate

¹ We are aware of O'Donnell's (1996) warning about the teleological bias of this word. We agree about the characterization of an informal institutionalization of Latin American polyarchies. We just employ the term -as Munck (1996) does- to say rules are accepted and political actors behave according to them without questioning them.

² Firstly proposed by Negretto (2011) for the study of constitutional reforms.

the costs and benefits of participating in the electoral contest in those scenarios where they have limited prospects of conquering seats and offices.

Taking in consideration these basic assumptions, this section briefly goes through the key changes introduced by the reform. It also deals with the final institutional outcome that emerged as a result of the natural conflicts of power, processes of cooperation and historical development. In December of 2009, Law 26.571 of “Democratization of Political Representation, Transparency and Electoral Equity” was enacted. It is organized around four principal axes, which we will disentangle afterwards.

A first axis refers to the *formation and consolidation of political parties*. One important assessment reformers made of political competition was that over the last decades the party system has been especially fragmented (in addition to inchoate) and denationalized.

As a consequence of the aforementioned evaluation, the diagnosis covered other aspects such as the emergence and considerable success³ of new parties created by rich business entrepreneurs. These parties are based on the economic power and in the logic of the market functioning as small enterprises in which political militancy basically responds to selective incentives⁴.

Hence, an institutional solution to these problems was seen by reformers as convenient. The party system was supposed to be reordered so that the existing parties (especially the big national ones) could become stronger organizations. In line with this diagnosis, the reform envisaged critical transformations in the political parties’ landscape, with its main objective being the reduction of the fragmentation of political

³ A well known example is the victory of F. De Narvaez’ party (Unión Pro) in 2009, in the legislative elections in the Province of Buenos Aires. With 34.58% of the votes, this party won Buenos Aires province, a district historically won by the Justicialist Party (PJ).

⁴ Related to political competition, the existence of *colectoras* (similar to cross-endorsement or fusion lists, consisting of ballots of candidates to a lower level of government from a small political party which are attached to a bigger party ballot submitting candidates for a higher level of government) is perceived as another cause of party system fragmentation. Also, the presence of occasional electoral “enterprises” whose support could be bought has been a common practice across the whole country.

parties. According to the National Electoral Chamber, in 2003 in Argentina there were 18 presidential formulas which competed for the national executive and 14 in 2007. By 2009, as another example, 18 political parties presented candidates for national deputies only in Buenos Aires province and there were 17 contending lists in Mendoza province where just 5 seats were in dispute. That same year the national chamber of deputies had more than forty-five legislative delegations.

A purpose of the new electoral legislation has been the avoidance of those “irregular” situations that threaten representative democracy and traditional political parties, and to organize political offer preventing the dissemination of small and not representative parties. In order to do so, Law 26.571 states that political parties must have at least 1.5% of national vote (around 400,000 votes) in a first round of elections (the primaries, which will be detailed in the next paragraphs) so as to contend for the national executive in the general elections, or 1.5% of the local vote (provincial districts) to be able to compete in the general elections for national legislative positions.

A priori, these new dispositions negatively affect the existence of small parties while strengthening the position of consolidated and traditional parties such as the *Union Cívica Radical* (UCR, centre) and the *Partido Justicialista* (centre-left or centre-right, depending on the internal winning set).

Partisan affiliation has also been set as a legal constraint to participation in the electoral contest⁵. According to those dispositions, we think certain ambiguities can be traced along the reform: it praises the role of affiliations with the demand of specific quantities in order for parties to be electorally recognized. At the same time, it considers party members almost as “common” citizens, as all citizens – and not party members exclusively – decide the future of political parties in open primaries. Therefore, partisan affiliations are a key issue for parties’ lives and for their electoral recognition, but on the other hand as primaries are open and voting is compulsory, national candidatures depend on the will of the citizenry as a whole.

Albeit, one of the most controversial articles of the law, No. 16,

⁵ To be classified as “National Party”, organizations must have the affiliation of four electors among a thousand in at least five districts, and one elector affiliated to each thousand national electors.

reinforces a condition from the previous law: a party must attain at least 2% of the valid votes in two consecutive national elections – in the corresponding district – in order to remain legally recognized as a political organization. If a party does not reach this threshold, it expires. Thus, a requirement of this sort might compel the restructuring of the political universe, reducing fragmentation and the number of parties.

Another axis is related to *candidate selection procedures*. Over the past decade and a half political parties have suffered different transformations and citizens have gained disaffection from their political elites who have stopped representing society's interests. Argentina reality is not differently characterized, although it seemed far from this world trend after redemocratization. According to Panebianco (1982), questions about the degree in which institutions are or not important apart from leadership became relevant in this context, where political parties no longer corresponded to ideological or programmatic structures.

Despite all this, parties still have the monopoly of political representation, they are in the basis of all modern democratic regimes and their main function is to propose candidates and erect leaders with real chances of getting elected. Although some of their traditional roles almost vanished, that main function did not die out and is its exercise which keeps them alive (Novaro: 2000). In fact, as it was first advocated by Anthony Downs (1957), winning elections is the principal *raison d'être* for parties.

Therefore, supporting the idea that a change in candidate selection procedures could democratize closed and halted organizations and mitigate all the problems parties were going through, reformers decided to meddle in political parties' lives. That is why the Open, Compulsory and Simultaneous Primaries⁶ have been a central ingredient of the new legislation. Through them citizens are compelled to have a part in the selection of internal disputes and to be involved in the process

⁶ They are *open*: nonpartisan, enabling all voters to choose any party's candidate they want to vote for; *simultaneous*: like in a general election, the pre-candidates of every party are elected the same day; and *compulsory*: as in every general elections in Argentina, voting is mandatory for every citizen, therefore involving the general public, and people can cast their ballot for any candidate regardless of party affiliation. Besides, if a party does not present pre-candidates – at least one- its candidates cannot participate in the general election. Conexão Política, Teresina, Vol.1, No. 1

of candidate selection. But the fact of participating in primaries does not imply a direct democratization of political parties; means do not have strict correspondence to ends, theoretically speaking (and as we will show, neither empirically). Citizens become involved in the selection of national candidates, and although through the subdivision of the electoral processes primaries can be formally seen as a different affair from provincial “back rooms” lists, in fact they are also decided by the same political elite.

A third point refers to *financing*. According to the former electoral law, parties’ financial resources had a mixed origin: the State financed their institutional duties and campaigns, allowing private financing⁷. Private incomes were pretty unregulated, allowing parties to hide their financial records, which “were left to God’s good hand”. Apart from huge inequalities between candidates and parties related to the money they could assign to financing (which was observed in the legislative elections of 2009 when the party of De Narváez spent much more money than the other parties⁸, winning the election in Buenos Aires); big private financing scandals appeared in the last general elections. Two famous cases were “the Valijagate of Antonini Wilson” and the “Efedrina case”.

Now, since the enactment of the electoral reform, financial contributions by legal persons are forbidden; only physical but not ideal persons are allowed to contribute. As well, private contracting of spots in television and radio is also banned; for the first time, the distribution of audiovisual spaces in radio and TV that were to be used by political parties exclusively depended on the State⁹. These important new

⁷ The same mixed system was applied to the contract of audiovisual spaces (Medina, 2009, p.17)

⁸ In those elections, parties led by De Narváez and Kirchner spent together 12 million Argentinian pesos. The third party that followed them in expenditures was the “*Coalición Cívica*”, spending only 700,000 pesos (Astarita, 2009)

⁹ Now the State itself has the responsibility of delivering TV and radio spots to every competing party. Meeting the requirements of article 43 sexies, the State has to distribute the spots providing that each party receives a 50% of all the available spots in proportion to the number of votes obtained in the last general election for national deputies, and another 50% equally among all political parties presenting candidates. Communication services are legally required to provide 10% of their time for electoral campaign needs.

regulations aim at reducing the existing asymmetries among parties with different financial means and linkages with powerful economic actors. In fact, audiovisual advertising used to correspond to about 80% (Abal Medina: 2009) of the total spending of political parties in their campaigns, meaning that those wealthier parties could make better and more expensive campaigns, while smaller parties could barely compete with them. This was an unfair condition that could not ensure an equitable competition. Besides, “the media” used to have differential prices depending on the party. This will now be avoided with the State as their only client.

Considering the new legislation as a whole, we observe how its different aspects go together: the reduction in the number of parties and the construction of more solid and structured organizations lead to a stronger capacity of financial control and accountability. However, we are not naïvely stating that institutional reinforcing would be automatic and would inexorably follow the pretended path. It is obvious that much of the amendments have the more urgent objective of strengthening electoral offer.

Finally, a fourth aspect of the reform is linked to the *modernization of the National Electoral Code*. Electoral rolls in Argentina had two harmful characteristics for democracy and equality: they were not totally updated and “cleaned” and women and men were registered in separate electoral rolls. The first aspect has sometimes helped to endorse fraud accusations, for sometimes even dead people voted.

Some other aspects of the electoral code were just out of date. The reform pleads for the update of all electoral rolls, adapts the communicational needs to the Internet and draws up common electoral rolls aiming at gender equality, which undoubtedly improves the quality of democracy.

The four axes presented comprise the most important aspects of the new legislation while they also refer to the declarations reformers made to back up the amendments. Of course, there is not an exact correlation between the problems identified by the advocates of the reform and the means defined in order to solve them. Besides, unintended consequences and their interaction with informal institutions should be taken in consideration. As Astarita (2009) clearly summarizes: “*the actors to whom new dispositions fall on, do not respond automatically to*

them, but instead, as time goes by, they design innovative practices capable of turning new regulations null". This would be an enterprise for the next sections.

Table No. 1 - Summary of the Four Main Axes of the Reform.

Topic	Diagnosis	Amendment	Pretended effects
Formation and consolidation of political parties	Fragmented, denationalized and inchoate party system	1.5 % of the national or local vote compulsory in primaries to be able to contend in general elections. 2% of the national vote in two consecutive elections	To order the electoral offer and to strengthen traditional big parties
Candidate Selection Procedures	Crisis of political parties and political representation	Open, simultaneous and compulsory Primaries	To democratize parties
Financing	Asymmetries and inequalities in access to financing and media	State regulation and distribution of parties access to media	More transparency and equality in political competition
Modernization of the National Electoral Code	Not updated registers, long and inefficient electoral processes	Digitalization and unification of electorate registers	More transparency in political competition

Source: own elaboration, based on the wording of Law 26.571.

3. The Road to the Political Reform: Long Journey and Shortcuts

Political reforms¹⁰ seem to be a means that consolidated democracies have in order to formulate institutional changes according to new political contexts and citizens' demands. However, in Latin America the story is pretty different. Our region has been widely judged as unstable and characterized by recurrent constitutional changes. Besides, such unsteadiness implied that new rules of political competition were defined each time power balances changed. At least, as Alexander (2001) states, this has been the trend since the emergence of the subcontinent countries.

¹⁰ We will refer to 'political' reform when considering consequences and implications of the reform on wide and general aspects of the political system. Then, we will talk about 'electoral' reform when we refer to its technical and formal aspects and legal consequences.

Last (re)democratization processes and the construction of new political regimes have followed this tendency. But the South Cone has started the 21st century with good news: a reality more similar to the one observed in European old democracies emerged. In the rest of the world from the early 1990s onward, occasional modifications to the electoral law have occurred including minor adjustments or more radical reforms like in the U.K., New Zealand (1993), Israel (1992), Italy (1993) and Japan (1994). Nowadays in our subcontinent national constitutions from (at least) the last decade in essence persist, but singular amendments and reforms in ordinary legislation became frequent (as in Uruguay, Argentina and recent debates in Chile). It is precisely in the context of this trend, that we consider the study of the last political reform in Argentina a fundamental issue. We assume that such a reform is closely linked to democratic stabilization and consolidation¹¹. As North states, institutional changes in consolidated political systems are usually incremental.

To study and understand institutional changes is not an easy purpose; in fact, it is a task that till now the new institutionalism could not completely apprehend. Among the different approaches disagreements arise and unsolved questions in its research agenda still remain. Rational choice approaches have developed good explanations about institutional origins and transformations, through distributive and cooperative perspectives; but they are excessively focused in actors, being functionalist and instrumentalist¹² (Pierson, 2003, Hall & Taylor, 1996). On the one hand, these studies are focused on short-term processes and do not pay attention to interactive effects among multiple institutions and between those institutions and the context in which they are immersed. On the other hand, historical approaches help us understand processes of maintenance and reproduction of institutions,

¹¹ As Escobar defines it, *a political reform is a legislative process in which rules of political competition are transformed, but there are no alterations to the current political regime* (Escobar: 2009, p.31).

¹² In their micro foundations and will of weighting predictive power of their models, they have a simplistic image of human motivation and they are accused of being excessively intentional, assuming the process of institutional creation is purposeful and is under the actors' control, who perceive and act consequently with the pretended effects (Hall & Taylor, 1996, p. 952)

although they do not have iron explanations of their origins, which are seen as contingent events. They focus on long-term processes, critical conjunctures and historical sequences, emphasizing structures and overextending causal chains.

Having briefly presented advantages and limits of the two most important perspectives from which political science deals with institutional issues, this paper aims at complementing those approaches as once Hall & Taylor (1996) proposed in order to have a more comprehensive understanding of our topic of study. In this section we will present an analysis of the reform from the perspective of a two-level theory which includes the advantages of precedent approaches. We will consider not only distributive but also cooperative principles linked to the reform process, and at the same time we will analyze the diverse aspects involved in this new legislation from a historical perspective.

A first level is related to particular preferences and interests of the actors implicated; the second one covers the menu of alternatives, the available options from which actors choose. In this last level we find efficiency principles but also the long-term processes and patterns that shape them¹³.

From a general sight, a strategic approach would consider short-term causes about the distribution of resources and interests of the different political actors (distributive perspective). This perspective would argue that the political reform of 2009 was just a consequence of the political aspirations of former president Néstor Kirchner who might have aimed at facilitating his victory through shortening time for agreements and alliances among parties before the elections, while hindering the reorganization of the opposition¹⁴. He would also have desired the recovering of the party structure (resources all across the country, legitimacy of all local leaders and the clientelistic linkages;

¹³ The path dependence hypothesis in electoral choice states that general institutional change is not often, because of informational and learning costs. From this perspective, institutional changes are mostly incremental (Negretto, 2006, p.425).

¹⁴ This argument is sustained by the fact that after the electoral reform parties and coalitions of parties must present their list of candidates fifty days before primaries, bringing forward the official presentation of general candidatures in comparison to past dates.

known as the “*aparato*”) of the *Justicialista* Party (PJ) or *Peronista* Party. But this analysis would be biased, as we mention, because of disallowing part of the reality.

As Marcelo Escolar (2009, pp.32-33) argues, political or electoral reforms are eminently political processes. Namely, they are always a result of the majority configuration of partisan interests, thus the last reform obviously responded to structural needs and expectations of the governing majority. The objective was to reduce the political offer, facilitate electoral victory and put the PJ under definitive and legitimate control of Néstor Kirchner changing the course of fate: in the last general elections in 2007, the PJ was fragmented and strongly divided. Figures in dispute for the leadership of the party presented their own lists of candidates. That is why reformers thought that the introduction of primary elections could be a way to avoid external conflict in general elections. Open primaries would favor the ruling party to count on the electoral support of citizens and not only on party members’ vote.

Of course, high participation thresholds that pretend to exclude small parties have been the outcomes of the distributive dispute held between political actors. These outcomes clearly favor the governing party, benefited by a wide electoral support and a fragmented and disorganized opposition and party system¹⁵.

Nonetheless, the aforementioned perspective would be incapable of explaining the amendments introduced in party financing issues. Discursively, this latter point plus the system of Open, Simultaneous and Compulsory Primaries were presented as an efficiency principle. According to it, all the actors were disposed to collaborate in order to improve the quality of democracy and to widen citizenship participation aiming at a higher social valorization of politics.

But principles of efficiency and a cooperative perspective must be complemented with the tracking of historical processes that have served as foundations for these modifications.

¹⁵ Reinforcing distributive principles can be seen as a product of the interpretation the government did of its last electoral defeat in 2009. According to Tonelli (2009), it was read as a consequence of *audiovisual media concentration, disorganization in social assistance, political fragmentation and media candidatures*.

A main and long-standing precedent to the political reform of December 2009 has been the so-called crisis of 2001¹⁶ which let show an undermined perception of political parties. This crisis evidenced the transformations that were happening in the representative linkage of the political system and the loss of the traditional leading role that political parties had had in structuring political identities; a tendency that has been afflicting the international context since the two preceding decades (Manin, 1998). This context resulted in the opening of a process of a series of discussions between political elites (strongly propelled during Duhalde's presidency¹⁷) also involving civil society, which can only be traced as a long-term process. In order to understand the complex institutional amendment of 2009, it is necessary to consider the mutation in the linkage between representatives and represented.

Moreover, the bases for political financing modification can be traced back to the '90s, a decade in which political corruption, excessive electoral expenditures and dubious origins of campaign financing were a common place.

Taking into account the preceding lines, the advantages of complementation can be easily observed. Inclusiveness and restrictiveness of the rules of political game cannot be approached just from a strategic perspective providing that a wider participation in the electoral processes and enhancement of the quality of democracy are efficiency issues. Furthermore, those are important historical demands that have been considered for the design of the political reform of 2009. Hence, in order to understand the precedents for the reform, long- and short-term causes are essential.

For both rational choice and historical institutionalism political parties are fundamental institutions, but for the first one they are just preference adding organizations, while for the second perspective programmatic and ideological aspects are defining issues. From our point

¹⁶ See Tonelli, L. (2009) in "*Conferencia sobre Reforma Política*", published by the National Electoral Department.

¹⁷ At the beginning of 2002 during the government of president Duhalde, discussions between political parties, Catholic Church and civil society organizations were held in order to introduce a political reform. A project was officially presented and discussed in Congress, but it did not succeed. Its core proposal was the implementation of primary elections for candidate selection.

of view, the role of political parties implies both characterizations¹⁸.

To conclude with this section we want to highlight the significance of thinking institutional changes through theories that consider not only endogenous (political actors, and distributive and cooperative perspectives) but also exogenous factors (national and international junctures, and historical processes). We agree with Shvetsova (2003) when saying that institutions are created in a context by which they are inexorably affected¹⁹(those effects depending on the interaction between institutions and context), but what we add is the need to go beyond the immediate context paying attention to historical roots and long-term processes as political parties, party systems and presidential traditions.

In Argentina a long journey started with the beginning of the 21st century when the political and socioeconomic crisis of 2001 put on stage the existence of an unprecedented crisis of representation and questions about the quality of our democracy emerged. The shortcuts were taken by the governing party who could finally reform the rules defining political competition. Of course, negotiations over some of the multiple amendments seemed not to reach a consensus, one of the most important issues being the inclusion of the Australian ballot. The question that we now pose is whether this institutional reform could represent a new trend in the region for changes in ordinary legislation aimed at improving our democracies which are not unstable or fragile any more.

4 New Elections Under New Rules. What Happened in 2011?

This section pretends to shed some light on the evidence that emerged from the first round of elections held under the new legislation.

¹⁸ Political parties are central to understand preferences: they add preferences and structure political change and, as Mainwaring and Scully state, they shape the political system, even if they are not well institutionalized (Mainwaring & Scully, 1995 p.3). Moreover, it is nodal to mention that according to Kitschelt et al. (2010) parties and party systems in Latin America are not programmatically structured, but this characterization demands a deeper analysis from a historical approach which implies a long-term process. This analysis will not be done herein.

¹⁹ For Shvetsova (2003), institutions are endogenous but their effects are always structurally exogenous to decisions because information is incomplete.

We consider that political actors and political parties are much more than only the recipients of the new normative dispositions. Therefore, we do not expect parties to automatically react according to the new rules, as reality implies the design and development of innovative practices capable of bypassing the new restrictions. Thus, just by observing the first primary elections held under the new legislation it is still impossible to determine any of the effects of the reform regarding the realignment of the electoral offer. In order to evaluate this, time is a necessary condition. As time goes by, rules will be internalized and strategic practices will be set aiming at avoiding any disadvantageous milieu. Only then, more insightful assessments could be made.

Consequently, although definite shifts on the electoral offer cannot be traced yet, we can certainly consider some of the first empirical consequences of other axes of the reform that have already been displayed shaping the electoral process of 2011. Among them, we can refer to the regulation of campaign finance and political broadcasting. This important aspect aimed at promoting a fairer electoral competition is one of the features regulated by the new law that has already shown some of its effects, benefits and limits.

In line with the general trend of the reform intended for a deeper involvement of the State in guaranteeing even opportunities for every political party in the context of an electoral contest, campaign financing and media access regulations have been a central issue.

According to the new legal dispositions for the primary and general elections of 2011, political parties were unable to contract private investment in radio and TV advertising (a mechanism that we have already explained). Though more egalitarian, the novel regulation on campaign financing presents a setback: it cannot avoid what we call undercover advertising. Only the governing party can take advantage of the State television channel producing masked advertising during the campaign, broadcasting public works or even somehow initiating political campaigns earlier than the other opposition parties. As we already said, the impact that the aforementioned disposition has had on the electoral process can already be observed.

On the other hand, as an example of its benefits, we can mention the case of one of the left wing party (Workers' Party), which (forced by the legal incentives for reducing the number of small parties, joined

other leftist factions becoming more powerful) could have radio and TV airtime for the first time. This small detail, plus the grouping incentives, resulted in an extraordinary and unprecedented performance of this very leftist party in the primary elections (which in the general elections of 2007 had had the worst performance ever).

Contrary to the current mainstream in the U.S.²⁰, where in early 2010 the Supreme Court ruled in “Citizens United v. Federal Election Commission”²¹ that corporate funding of independent political broadcasts in candidate elections cannot be limited pursuant to the right of these entities to free speech, in Argentina, in line with many other countries of Latin America, such as Mexico, the trend is just the opposite: limiting the influence of the private sector on politics.

Another innovation introduced by the reform that has shown up for the first time this last primary elections, refers to the amendment of the National Electoral Code, Law No. 19.945: the unification of the electoral roll and polling stations. Traditionally, they used to be divided by gender, but now men and women figure in a unified electoral roll and they do not vote in separate polling stations. The first elections let see it has been a positive innovation for the electoral process, making rolls more transparent and equal, depending on the Judicial Power (instead of on the executive). However, such innovation can be seen by citizens as a mere irrelevant administrative aspect.

Important arguments for the need of an electoral reform were based on the awareness that parties had become unproductive and vaguely representative. Therefore, the introduction of amendments aimed at reducing the number of political parties and at hindering the creation and maintenance of party organizations was a main purpose. Supposedly, if citizens had a larger intervention in the process of candidate selection, candidates would have greater social legitimacy (Medina, 2010) and would be more representative. Besides, parties would

²⁰ The U.S. is the only other country in the world where primary elections are regulated – as in Argentina- by the State.

²¹ The U.S. Supreme Court ruled that the McCain-Feingold Act of 2002, the U.S. federal law that regulates the financing of political campaigns, was in violation of corporations’ and unions’ First Amendment rights. Under the January 2010 ruling, corporations and unions are no longer barred from promoting the election of one candidate over another candidate.

become internally more democratic.

But does an electoral reform produce the effects that would be expected on the basis of those features of the system that are modified? Not exactly. Political practice would probably prevent the formal and desired changes to be a fact, something that the introduction of primary elections let us observe.

Formal electoral rules shape the strategic behavior of political actors, but this is not a simple one-directional causal arrow from the rules to party competition. Instead, an interactive process seems more plausible. In order to exemplify this, here we outline one of the main features of the electoral reform: the Open, Simultaneous and Compulsory Primaries (PASO - for its acronym in Spanish). Again, the advantage in analyzing this aspect of the reform is that this innovation has already been displayed.

As in the U.S. since the early 20th century and in Uruguay since the constitutional reform of 1996, this 14th of August 2011 Argentina implemented for the first time a system in which the nomination of candidates is no longer the responsibility of the political party organizations themselves. A system of primary elections is now being conducted by the government on behalf of the parties.

In this initial primary election, citizens all across the country had to choose the presidential and national deputies' pre-candidates of each party that would compete in the general election. Also, but only in those districts (Provinces) that were supposed to renew their national senators, pre-candidates for this category were elected.

According to the presidential category, citizenry could choose among 10 presidential pre-candidates among which the main contenders were: the current president Cristina F. de Kirchner (*Frente para la Victoria*), Ricardo Alfonsín (*Unión para el Desarrollo Social*), Hermes Binner (*Frente Amplio Progresista*), and Eduardo Duhalde (*Frente Popular*)²². The fact is that all these candidates were proclaimed as pre-candidates by a process that the primaries tried to impede: negotiations among the main political

²² The other candidates were: Elisa Carrió (Coalición Cívica ARI), Adolfo Rodríguez Saá (Compromiso Federal), Jorge Altamira (Frente de Izquierda y de los Trabajadores), Alcira Argumedo (Proyecto Sur), Sergio Pastore (Movimiento de Acción Vecinal), and José Bonacci (Del Campo Popular).

figures of each party. Therefore, none of the main parties presented more than one candidate for president/vice-president and mostly of the other seats in contention; and citizens just confirmed their support for unique couples of candidates and lists already decided by party leaders in back rooms.

Given that this is the case, what was the purpose of this Primary? The answer to this question resides in all the categories other than “president”, for which some parties had more than one candidate or list (either deputies or senators); but paradoxically internal competition was a fact not in national charges (the ones which were object of the new legislation) otherwise only for local charges, a level not covered by the national legislation. Anyhow, it is obvious enough that political practice within parties for the definition of presidential pre-candidates hindered formal rules.

The main objective of these primaries was to set the stage for a clearer situation for the general election. But what do we mean by a clearer situation? The reduction of the spectrum of candidates available is a possible answer. In fact, that objective was partially achieved: two out of the ten presidential candidates could not reach the threshold (a minimum of 1.5 % of all the valid votes in the whole country) necessary to compete in the general elections. Then, considering only the presidential category, we can assume these first primary elections were something like a first round of the general elections or just a mechanism aimed at measuring how preferences were distributed among the electorate as a source for parties to reconsider their strategies. So, if in the general election a second round was needed, we would have had a sort of three-round election which is not the same as having real primaries and general elections (with or without runoff) afterwards.

It is also interesting just to observe the quantity of presidential candidates that competed in each of the last five elections (Table No. 2). It is easy to see the constraining effect of the system of primary elections: in 2011 the number of competing candidates for the general elections is even smaller than in the elections before 2001. In 2001, when the huge political and economic crises arose, the party system exploded. An expression of that situation was observed in the presidential elections of 2003 when 18 formulas ran for the presidency. Although in 2007 that tendency began to revert, the introduction of

primaries intentionally accelerated that trend.

Table No. 2: Number of Presidential Candidates for each General Election.

Election	Number of candidates
1995	14
1999	10
2003	18
2007	14
2011	8

* Number of presidential candidates able to compete in the general election.

Source: own elaboration based on data from the Ministry of Interior. Source:

As far as Argentina is a federal country (determined by the existence of three levels of government and electoral competition), in which provinces have considerable political autonomy, provinces could choose whether to simultaneously adopt a system of primaries for the election of sub-national pre-candidates. In order to do so, their agreement to the national law was required. Accordingly, only four provinces out of 24 concurrently enacted the national system of primaries: Entre Ríos, San Juan, San Luis and Buenos Aires²³. Not surprisingly, real political competition in primary elections was defined at the sub-national level. Authentic competition within parties happened for the categories of mayors and provincial legislators in those provinces that enacted the law for primaries. Therefore, internal competition occurred more clearly right where the law makes it optional for provinces to enact the law.

In the rest of the districts (provinces), internal competition within parties took place (when it did) for the category of national deputies, although the final composition of the party's general-election list was defined by each party according to its statute or by-law. That is: each

²³ On May 22nd of 2011 the province of Santa Fe applied its own system of Open, Simultaneous and Compulsory Primaries. In 2004, the provincial congress passed the Law 12.367. Innovation in this province results also in the implementation in 2011 of the Australian ballot for every provincial category (Law 13.156).

statute establishes a particular system of proportional distribution to determine the number of candidates of each primary list that will integrate the general-election list. So it depends on every party, which puts the primary lists together. In fact, citizens did not directly participate in the confection of the lists.

In his seminal work, Duverger (1954) stated that electoral rules shape competition between political parties. And one important assumption of his famous laws is that electoral systems' influence goes no further than the district level boundaries.

In line with this, we consider that although the reform has been consciously designed to reduce the chances for the existence of minor parties, this objective does not consider the sub-national party systems which cannot be affected by those measures in the law intended for a reduction in the number of competing parties, among which primary elections are. On the one hand, electoral rules affect the number and size of parties competing in elections (Cox, 1997, Duverger, 1954, Lijphart, 1994, Rae, 1967, Sartori, 1976). On the other hand, political parties seek those rules that best suit them (Boix, 1999, Calvo, 2005, Colomer, 2004).

Recently, several studies have shown the growing territorialization of party competition in Argentina (Calvo & Escolar, 2005, Leiras, 2007, Gibson and Suárez Cao, 2010). Some authors suggested that competition patterns at all levels are likely to be similar and consequently the party system is structured as the dominant (national) one (Ratto & Medina, 2010).

In fact, in the Argentinean party system it is not the dominance of national logic that imposes its logic on sub-national levels. It is the sub-national dynamics that allows or denies the national influence over the sub-national party systems.

5 An Institutional Reform to Consolidate Democracy?

As different authors affirm (Tomassi et al.: 2006; Abal Medina, 2009), partisan competition exert its influence over the quality and stability of public policies. Hence, the existence of lots of small different parties may hamper the legislative process as well as the tailoring of consensual policies. In addition, identification of responsibilities and

accountability processes may also be hindered.

This argument is part of the debate about democratic regimes and is coincident with the academics that stand for government efficiency, as Sartori (1994), and strictly believe in political alternation. There is no reason to say alternation is not an important issue in the current debate about the quality of representative democracies, but there is a new trend in some countries of South America. This novel tendency refers to the development of new legislation in which what is at stake is the capacity of governments to actually govern, produce public policies and avoid the long-time criticized presidential paralysis. Since Linz's seminal paper on the critics to presidentialism (1990), situations of divided majorities have been a principal fear.

At least in the political reform that we have thoroughly presented, alternation does not seem to be a main concern of the political actors that have been responsible for its drafting (it is worthy to say that there was a lot of alternation during military dictatorships in the country). On the contrary, their principal preoccupation has been related to guaranteeing governability aiming at producing stronger governments in case they constitute the ruling party.

Issues regarding quality of democracy have been addressed by politicians and the objective to internally democratize parties has been a first step in this direction. Primary elections have clearly been a turning point. However, with the analysis already made we tried to point out that the requirements and formal regulations are not enough in order to generate real changes in political behavior.

But one of the main positive questions that arise with the electoral reform is that our democracy is witnessing a pattern of consolidation in which the issues that define political contestation are in the centre of attention. We are focusing on those important institutional matters that can improve the quality of our democratic system. And the way in which our political system deals with them is, precisely, by modifying electoral institutions that determine political competition among political parties and doing it in an incremental way. Among the amendments that were not introduced in the reform there was the ballot structure. Opposition parties wanted the Australian ballot to be part of the new law but no consent could be achieved in order to introduce this modification on the ballot. It is a really controversial matter as the power

of party labels and ‘*aparatos*’ are called into question. At the same time, advocates of the Australian ballot consider that ‘clientelistic’ and other common practices as voting control and ballot robbery could be avoided. Anyway, it is still a pending issue about which many arguments for and against can be heard. In fact, one of the core expectations in rational choice institutionalism is that the ballot structure would affect the emphasis on programmatic or particularistic campaigning. This expectation is also among the main arguments of the ruling party against such an innovation in the ballot structure.

In a nutshell, we presented debates about the complexity of institutional reforms, reinforcing their non-linear condition. Moreover, we made clear the limits of restricted approaches to institutional amendments and presented the two-level theory. Consequently, complementation seems to be the starting point to a better understanding of institutional transformations that could luckily constitute not only a new trend but a general rule in the region. Comparative studies of these kinds of amendments in the region are a necessary research agenda we tried to open with this paper.

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